



# copyright crash course

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## copyright in the library

### Providing access to electronic copies

Libraries, like individuals, have rights under [17 U.S.C. Section 107](#) ("Section 107") to make fair use of copyrighted works. They commonly exercise these rights in the Reserve Room.

#### Electronic reserves

Electronic reserve systems are commonplace. Together with course management systems and faculty and departmental Web servers, e-reserves as they are called, have all but replaced paper coursepacks on college campuses. The obvious convenience of electronic storage and access makes this medium very attractive. E-reserves can involve all of the rights of the copyright holder discussed in connection with print copies, sound and video recordings and duplication of images, depending upon the work to be reserved. e-reserves will always involve copying, but will also involve at least one and perhaps both the performance rights (public display and/or performance), and a public distribution.

With only minor modifications, we could rely on the fair use analyses described for print copies and sound and video recordings and photographic image duplication to make six articles and a chapter from a book, audio and video recordings and photographic images available to students through e-reserves. We will, however, modify our approach to e-reserves somewhat, in recognition of the additional risks to copyright owners' interests that electronic copies create: the ease of further duplication and distribution. As always, the hallmarks of fair use involve adequate protection of the copyright owner's interests. In electronic reserves, this usually means password protected storage; streaming media when practical; and getting permission after first semester use where there's a functional permissions market, as there is for text. It can also mean purchasing licensed materials that are appropriate for your institution, such as image collections (ARTstor, Saskia).

### Guidelines for fair use in the electronic environment

The National Information Infrastructure Task Force Working Group on Intellectual Property Rights established a [Conference on Fair Use](#) in the fall of 1995. The conference brought together interested parties (publishers, authors, libraries, etc.) to negotiate fair use guidelines for the use of materials in a variety of contexts: electronic reserves, use of image archives, interlibrary loan, distance learning and multimedia.

The [draft Electronic Reserve Guidelines](#) were not agreed upon widely; nevertheless, they provide a good framework for thinking about what is fair use in the reserve context. As is the case with all Guidelines, they are not the law, but only at best, a statement of certain parties about what they believe would be fair use. As such they represent considerable compromise.<sup>1</sup> The Electronic Reserve Guidelines permit us to place small parts of others' works on reserve for one semester without permission. Thereafter, if the same faculty member requests the same materials for the same class, we should get permission. They also require that only students in the class should have access to the materials. These limitations illustrate the kind of consideration given to the copyright owner's interests.

The four factor fair use test also balances the interests of both the users and the owners of copyrighted works. The analyses set forth in the companion articles on print copies and sound and video recordings and photographic image duplication show how fair use achieves balanced results. For example, the easy availability of a license to use a work, or the lack thereof, influences the fourth factor. The scope of fair use is broader for media such as movies, music and images; narrower for text. This scope is implemented in time (the amount of time one may use materials without permission) and in the amount of the materials that can be used. So, continued educational uses of materials for which permission is difficult or impossible to obtain are likely fair uses; continued educational uses of materials for which permission can easily be obtained are less likely fair uses.

One note of caution: Because reserve materials are suggested or required course readings and suggested or required course readings are excepted from the coverage of the provisions of the Digital Millennium Copyright Act ("DMCA") that limit the liability of Internet service providers (ISPs), the DMCA ISP provisions do not apply to them. This means that if reserve materials are found to infringe a copyright owner's rights, the library or the University of which it is a part will not be able to take advantage of the special protections set forth in the DMCA and will not have to follow its detailed notice and take-down procedures, but must rely instead on all the other defenses that are available under the rest of the copyright law, including but not limited to fair use and the good faith fair use defense. For more information about the DMCA and ISP liability limitations, please see [Is your library an Internet service provider under the DMCA?](#)

#### Footnotes:

1 For more information about the Guidelines, see [CONFU](#).

## The subjects in this series include:

### Fair Use (Section 107)

- Reserving works for limited use, generally
- Print copies in the reserve room
- Reserve rooms for images, audio and audiovisual works
- Providing access to electronic copies
- [Library copying for patrons and for the library's collection](#)

### Library reproduction and distribution (Section 108)

- Archiving
- Patron requests
- Unsupervised copying, news programs and contractual limitations on acquisitions
- Interlibrary loan

### Other

- Scholarly communication
- [The digital library](#)
- [Licensing access](#)
- [Is your library an Internet service provider under the DMCA?](#)

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